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ORIGINAL

October 16, 1998

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: *In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147
Reply Comments of Transwire Communications, Inc.

Dear Ms. Roman Salas:

Pursuant to section 1.419(b) of the Commission's rules, transmitted herewith, on behalf of Transwire Communications, Inc., are an original and four (4) copies of its comments in the above-referenced proceeding. Also enclosed is a copy of these comments on diskette formatted in WordPerfect 5.1 for Windows.

In addition, enclosed is a confirmation copy of this filing marked "Stamp In." Please date stamp this copy and return it to the courier delivering this package.

Should any questions arise concerning this filing, please contact the undersigned attorney.

Sincerely,

Renée Roland Crittendon

Enclosures

04

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	**CC Docket No. 98-147**
Advanced Telecommunications Capability	)	

REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.

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Dated: October 16, 1998

SUMMARY

Access to the network and facilities necessary to provide advanced telecommunications services must be a fundamental goal of the Commission in carrying out its statutory duty under the Telecommunications Act of 1996[101] (the "Act") to "encourage the deployment capability on a reasonable and timely basis of advanced telecommunications capability to all Americans."[102] In their comments in this proceeding,[103] however, the incumbent LECs continue to pull out all the stops to try to lock out competition by locking-in for themselves -- or their advanced services affiliate which, under their proposals would be nothing more than the incumbent LEC itself -- access to the network, facilities and equipment which competitors need in order to provide advanced services. First, the incumbent LECs press the Commission to permit them to provide advanced services on an integrated basis free from section 251 obligations. Transwire believes that adoption of this proposal would greatly imperil the development of competition in the advanced services market. Left to their own devices, the incumbent LECs have no incentive to open their networks to competitors and will continue to resist doing so. The Commission must therefore hold fast to its ruling applying the section 251(c) obligations to incumbent LECs offering advanced services on an integrated basis.

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101 *See* Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153 (1996).

102 *Id.*, reproduced in notes under 47 U.S.C. §157 (1996).

103 Comments of Ameritech, CC Docket No. 98-147 (filed September 25, 1998) ("Ameritech's Comments"); Bell Atlantic's Comments, CC Docket No. 98-147 (filed September 28, 1998) ("Bell Atlantic's Comments"); Comments of BellSouth Corporation, CC Docket No. 98-147 (filed September 25, 1998) ("BellSouth's Comments"); Comments of SBC Communications, Inc., CC Docket No. 98-147 (filed September 25, 1998) ("SBC's Comments"); Comments of U S WEST Communications, Inc., CC Docket No. 98-147 (filed September 25, 1998) ("U S WEST's Comments").

Second, in the event the Commission adopts its proposal in the *NPRM* to allow the incumbent LECs to offer advanced services on the same footing as other competitive LECs through a separate affiliate, the incumbent LECs seek to strike down all meaningful separation between themselves and their advanced services affiliates. The incumbent LECs' proposals, including wholesale transfers of advanced services facilities between an incumbent and its affiliate and the imposition of non-structural separation requirements, will effectively enable the incumbents to provide advanced services on an unregulated, integrated basis – albeit under the guise of a "separate affiliate." The incumbent LECs must not be allowed to sneak through the back door that which they should be precluded from bringing through the front – incumbents' provisioning of advanced services free from their section 251(c) obligations.

The Commission must therefore, at minimum, hold fast to its separate affiliate proposal, including the "section 272-type" separation requirements attendant thereto. Moreover, the Commission should bolster its proposed separation requirements, and prohibit all transfers of facilities, equipment and assets between the incumbent and its advanced services affiliate. These restrictions are necessary in order for competition to truly take place on a "level playing field."

Furthermore, as the wide array of comments make clear, national collocation and local loop standards are necessary to implement the pro-competitive provisions of the 1996 Act and remove barriers to entry. Transwire supports the Commission's plan to implement national collocation rules to reduce the costs and delays currently associated with obtaining collocation space, to provide competitive carriers with predictability and efficiency in their provision of services, and to enhance the timely deployment of advanced services. Transwire urges the adoption of rules to require nondiscriminatory collocation, collocation of cost-efficient integrated equipment, and the timely ordering and provisioning of collocation space. In addition,

Transwire, along with a broad consensus of commenters, advocates requirements to allow access to the local loop at any technically feasible point and nondiscriminatory access to OSS systems for loop ordering and provisioning.

Transwire again expresses its support for the Commission's conclusion that the dichotomy drawn between telecommunications services and exchange access services in the *Local Competition Order* is inapt in the advanced services context. Advanced services and the components that facilitate any advanced services offering, as ultimately deployed in the marketplace, must be subject to the resale obligations imposed by section 251(c)(4) of the Act in order to ensure that the pro-competitive goals of the Act are realized in the marketplaces regardless of whether such services or components are classified as telephone exchange or exchange access services.

Finally, Transwire urges the Commission to resist the temptation to grant even limited interLATA relief to the BOCs for the purpose of entering the interLATA services market. One of the cornerstones of the 1996 Act is section 271, which quite explicitly sets forth the requirements which BOCs must satisfy in order to enter the interLATA services market. To grant their requests for interLATA relief, even on a limited basis, turns the Act on its head. Congress contemplated the situation the BOCs posit as requiring relief, and the Act manifestly demonstrates that Congress rejected it in favor of competition. As demand requires, competitors—who are just as capable as the BOCs and likely more committed to the advanced services market—will enter the market and provide advanced services capability. Transwire urges the Commission to let the market work its magic in the interLATA advanced services market without interference from the BOC monopolists.

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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	**CC Docket No. 98-147**
	)	

REPLY COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.

Transwire Communications, Inc. ("Transwire"), by and through its attorneys, hereby submits its reply comments on the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding concerning the deployment of wireline services offering advanced telecommunications capability.[1]

I. PROVISION OF ADVANCED SERVICES THROUGH A SEPARATE AFFILIATE

A. The incumbent LECs must not be permitted to provide advanced services on an integrated basis free from section 251 obligations.

In its *Advanced Services Order*, the Commission ruled that the incumbent LECs' obligations under section 251(c) of the Act apply in the context of advanced services.[2] In the

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[1] *See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket Nos. 98-147, *et al.*, FCC 98-188 (released August 7, 1998) ("*NPRM*"). The Memorandum Opinion and Order is also referred to herein as the "*Advanced Services Order*" or "*Order.*"

[2] *Advanced Services Order* at ¶¶ 45-64.

NPRM, however, the Commission proposes a separate affiliate construct whereby an incumbent LEC would be permitted to offer advanced services on the same footing as other competitive LECs where the incumbent does so through a "truly" separate affiliate.[3] Notwithstanding the clear intent of the Commission not to allow the incumbent LECs to circumvent their 251(c) obligations in the advanced services market, the Bell Operating Companies ("BOCs") ask the Commission to abandon its separate affiliate approach in favor of permitting incumbents to provide advanced services on an integrated basis free from section 251(c) regulation. Incredibly, the BOCs advance the argument that freeing the incumbent LECs from section 251(c) obligations will advance competition and the deployment of advanced services. They claim that imposing a separate affiliate requirement as the "price" to avoid section 251 obligations will impose unnecessary costs and inefficiencies that will delay broad scale deployment and increase costs to consumers.[4] The BOCs therefore conclude that the "costs" associated with separating advanced services outweigh any benefits arising from the separate affiliate proposal.[5] Further, the BOCs assert that no further regulation is needed because the "incumbents make loops and

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[3] *NPRM* at ¶¶ 85-115.

[4] Bell Atlantic's Comments at 19. *See also* U S WEST's Comments at 2 ("[b]y permitting incumbent LECs to provide advanced services free from unbundling obligations on an integrated basis, the Commission will allow them to achieve considerable efficiencies and thereby introduce advanced services to small and rural communities that otherwise will be unserved"); SBC's Comments at 3 ("[t]he best way to achieve the promise of 706 is to permit each ILEC to reap the benefits of its own efforts, investments, and efficiencies through appropriate regulatory relief for the ILEC itself"); BellSouth's Comments at 4 ("[t]he Commission's proposal to import a strict separate affiliate framework into the advanced services setting is unwarranted and counterproductive ... [w]hen separate affiliates are not required, competition has flourished and new and innovative services have been made available to an increasing number of consumers").

[5] *See, e.g.*, BellSouth's Comments at 13-14; Bell Atlantic's Comments at 22-24.

collocation available,"[6] and the availability of negotiation and arbitration obviate the need for unbundling rules for incumbent LECs' advanced services network.[7]

The BOCs' proposal blinks reality. First, the procompetitive benefits of separate affiliates clearly outweigh any costs to the incumbents associated with creating separate affiliates. The BOCs point to their costs of separating an already integrated network to advance their position against separate affiliates. For example, BellSouth states:

> [t]he greatest costs of separation arise from disentangling advanced services from their integration with the systems and other infrastructure of ILECs' operations. Even new services like DSL service are integrated with the existing operational support systems to handle the ordering, provisioning, maintenance, and billing for DSL services and has long had packet switches integrated into its operational infrastructure.[8]

This integration, however, is precisely the reason why regulation is necessary. A competitive LEC whose advanced services facilities and equipment are not integrated into the incumbent network will clearly be at a competitive disadvantage vis-à-vis a fully integrated incumbent network. Moreover, the incumbents are not the only parties willing and able to offering advanced telecommunications services. It is therefore more important in the long run to level the playing field for all competitors by, among other things, holding the incumbents to their 251(c) obligations, than it is to try to optimize the BOCs' internal costs and efficiencies.

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[6] U S WEST's Comments at 3.

[7] BellSouth's Comments at 27 ("the Commission should first rely on voluntary negotiations and, if they fail, trust the state commissions to fulfill their statutory responsibility to make advanced services equipment available to competitors where appropriate under sections 251 and 252").

[8] BellSouth's Comments at 13.

Assuming, *arguendo*, that structural separation will increase the incumbent LECs' costs of providing advanced services, Transwire believes that such costs pale in comparison to the costs -- in terms of the deployment of advanced services and ultimate competition -- associated with failing to enforce the ILECs' section 251(c) obligations.

Moreover, history makes clear that if the Commission relies on the ILECs' promises to "play fair" -- *i.e.*, to provide access through voluntary negotiations -- competition in the advanced services market will never materialize. Absent at least minimum requirements, incumbent LECs have no incentive to provide new entrants with the facilities and equipment that will be used to compete against them. The Commission must therefore enforce the incumbents' 251(c) obligations in the advanced services context.

B. The Commission must make clear that the unbundling obligations of section 251(c) apply to all facilities and equipment necessary to provide advanced services, including DSLAMs and packet switches.

In its *Local Competition Order*,[9] the Commission specifically left open the possibility of identifying additional or different unbundling requirements, including the unbundling of packet switches, as technology changed or new services were developed.[10] Transwire suggests that the Commission take this opportunity to expand its unbundling requirements as they pertain to the provisioning of advanced services and, specifically, require incumbent LECs to unbundle DSLAMs and packet switches.

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[9] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 ("*Local Competition Order*").

[10] *Local Competition Order*, 11 FCC Rcd 15618, ¶ 233, 11 FCC Rcd at 15713, ¶ 427.

U S WEST claims that the unbundling requirements should not apply to "nonbottleneck advanced services facilities," such as DSLAMs or packet switches, because competitors may purchase such facilities themselves from independent vendors,[11] and therefore will not be impaired in their ability to provide advanced services within the meaning of section 251(d)(2).[12] This interpretation of the term "impaired" was rejected by the Commission in its *Local Competition Order*.[13] The Commission went on to explain its interpretation of "impaired" to mean that an entrant's ability to offer a telecommunications service is "impaired" or "diminished in value" if "the quality of the service the entrant can offer, absent access to the requested element, declines and/or the cost of providing service rises."[14] As this test is certainly met in the

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[11] *See, e.g.*, U S WEST's Comments at 7 ("[w]ith respect to xDSL-technology-based services as a class, for example, all of the advanced data equipment used by incumbent LECs can be purchased at market prices from independent vendors").

[12] Section 251(d)(2) provides as follows:

> In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at minimum, whether –
>
> (A) access to such network elements as are proprietary in nature are necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that is seeks to offer.

47 U.S.C. § 251(d)(2) (1996).

[13] *Local Competition Order*, 11 FCC Rcd at 15643, ¶ 286, *affirmed* in *Iowa Utilities Board v. FCC*, 120 F.3d 753, 811 (8th Cir. 1997), *cert granted sub nom, AT&T Corp. v. Iowa Utilities Board,* 118 S.Ct. 879 (1998) ("*Iowa Utilities Board*") ("[a]llowing incumbent LECs to evade their unbundling duties wherever a network element could be obtained elsewhere would eviscerate unbundled access as a means of entry and delay competition, because many network elements could theoretically be duplicated eventually").

[14] *Local Competition Order*, 11 FCC Rcd at 15643, ¶ 285, *affirmed, Iowa Utilities Board,* 120 F.3d at 811.

case of DSLAMs and packet switches, the Commission should expressly direct the incumbent LECs to provide unbundled access to their packet switches and DSLAMs.[15]

C. The Commission must hold fast to the structural separations requirements proposed in the NPRM, but bolster such requirements to achieve "true" separation.

As part of the *NPRM*, the Commission proposes certain guidelines for the separate affiliate proposal which appear to be modeled on the structural separation requirements of section 272 of the Act.[16] Certain of the incumbent LECs claim that the structural safeguards proposed by the Commission are unwarranted and unnecessary, and that less restrictive requirements are sufficient to protect against anti-competitive practices. For example, U S WEST claims that the requirements established by the Commission in the *Competitive Carrier Fifth Report and Order*,[17] as modified by the *LEC Classification Order*,[18] should govern.[19]

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[15] Indeed, the Commission has ruled that section 251 applies to advanced telecommunications facilities and services offered by an incumbent local exchange carrier and, more specifically, that the facilities and equipment used by incumbent LECs to provide advanced services are network elements and subject to section 251(c). *Advanced Services Order* at ¶¶ 32-64.

[16] 47 U.S.C. § 272 (1996).

[17] *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 FCC2d 1191 (1984) ("*Competitive Carrier Fifth Report and Order*").

[18] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 12 FCC Rcd 15756 (1997)("*LEC Classification Order*").

[19] U S WEST's Comments at 25-28. Under U S WEST's proposal, an affiliate would only be required to (1) maintain separate books of account; (2) not own transmission and switching facilities jointly with its affiliated exchange company; and (3) acquire any services it obtains from its affiliate exchange company at tariffed rates, terms and conditions or on the same basis as requesting carriers that have negotiated interconnection agreements. *Fifth Report and Order* at ¶ 9; *LEC Classification Order* at ¶ 164.

BellSouth supports a slightly modified version of U S WEST's *Competitive Carrier* approach.[20] SBC supports adoption of a model based on Section 22.903 of the Commission's rules (pertaining to BOC provisioning of cellular services),[21] while Bell Atlantic presses for the non-structural separation requirements associated with the incumbent's provision of information services and customer premises equipment.[22]

Strict adherence to the separation requirements is necessary to prevent anticompetitive behavior, including discrimination and cost allocation. If the Commission is going to allow incumbents to offer advanced services as "competitive LEC-affiliates," it must make every effort to ensure that the affiliate is truly separate from the incumbent. The incumbent LECs' proposals fall well short of this objective. The Commission should reject the incumbents' plea for less restrictive requirements and, at minimum, hold fast to its proposed "section 272" structural separations requirements.

Moreover, in light of the inherently unique relationship between the incumbent LEC and its advanced services affiliate, the current section 272 requirements should be fortified in the advanced services context. As noted by MCI WorldCom in their comments in response to the *NPRM*, "[s]ection 272 was fashioned as a means of preventing the BOCs from leveraging their monopoly power in the local service market into adjacent competitive markets, such as enhanced

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[20] BellSouth's Comments at 37. BellSouth's proposal would add to U S WEST's proposal the requirement that the affiliate acquire non-telecommunications services from the incumbent on an arm's length basis pursuant to the Commission's affiliate transaction rules. *See Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service*, Report and Order, 12 FCC Rcd 15668, 15673, ¶ 5 (1997), *clarification*, 12 FCC Rcd 17983 (1997).

[21] SBC's Comments at 11.

services ...or long distance service ... [h]ere, however, such separation cannot serve the same safeguard function, since both entities – the ILEC and its advanced services "CLEC" – are engaged in the provision of local telecommunications services."[23] Transwire therefore believes that the separations requirements included in section 272 should be supplemented to include, at minimum, the following requirements:

- The incumbent's affiliate should be limited to providing only "advanced telecommunications services" and should be kept separate from other subsidiary or affiliate operations of the incumbent;
- The incumbent LEC should be precluded from funding or financing the operations of its advanced services affiliate;
- The incumbent LEC should be required to file detailed performance and quality of service reports;
- Additional corporate structural separation requirements should be imposed, such as requiring a minimum percentage of outside ownership and directorships;
- The Commission should decline to adopt any sunset dates; and
- The advanced services affiliate should be compelled to allow equal access to competing internet service providers ("ISPs") services.

D. The Commission should prohibit all transfers from an incumbent LEC to its advanced services affiliate.

The Commission tentatively concluded in the *NPRM* that, subject to a "*de minimis* exception," a wholesale transfer of facilities used to provide advanced services, including, but not limited to DSLAMs and packet switches, would make an affiliate the assign of the incumbent

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[22] Bell Atlantic's Comments at 24-27.

LEC, and therefore subject to incumbent LEC obligations. [24] The incumbent LECs, however, claim that wholesale transfers to their affiliates of "nonbottleneck" facilities, such as DSLAMs and packet switches, should not render the affiliates "successors" or "assigns" of the incumbent.[25] The BOCs rely on judicial decisions which they believe would not render the affiliate a "successor" or "assign" insofar as the affiliate would not be acting as "a continuation" of the incumbent or "stepping into the shoes" of the incumbent.[26]

Inasmuch as an incumbent transfers to its affiliate all of its advanced services facilities and equipment (notwithstanding the underlying network), Transwire believes that the affiliate in effect does step into the shoes of the incumbent which, until that point, was offering advanced services. That is, regardless of the appropriate legal definition of "successor" or "assign" in the context of advanced services, the reality is that any transfer of facilities between the incumbent and its affiliate provides the affiliate with the ability to provide advanced services in lieu of the incumbent. Therefore, to ensure compliance with the Commission's separate affiliate proposal as it relates to the statutory definition of an "incumbent,"[27] the Commission must prohibit all transfers between an incumbent and its advanced services affiliate.

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[23] MCI WorldCom's Comments at 30.

[24] *NPRM* at ¶ 106.

[25] U S WEST's Comments at 29-35; SBC's Comments at 7; BellSouth's Comments at 43-44.

[26] U S WEST's Comments at 31-32; Bell Atlantic's Comments at 27.

[27] 47 U.S.C. 251(h) (1996).

Moreover, a prohibition against all transfers between an incumbent and its affiliate is the only way to ensure a level playing field among all advanced services competitors. For example, it is highly possible that only an affiliate's advanced electronics and equipment which it received from the incumbent would be compatible with the incumbent's facilities, thereby providing the affiliate with a distinct competitive advantage over other competitors. As the intent of the separate affiliate proposal is to hold the incumbents' affiliates to the same standards as other competitive LECs, the affiliates should be required to finance and purchase the equipment and assets that each competitive LEC was required to purchase.[28]

In sum, all transfers between the incumbent LEC and its advanced service affiliate should be prohibited. Moreover, for the same reasons, the Commission should prohibit joint marketing by an incumbent and its advanced services affiliate and enforce, to the fullest extent possible, the nondiscrimination requirements of the separate affiliate proposal.

Finally, assuming that the Commission adopts a *de minimis* exception to affiliate transfers, such exception should apply to the transfer of all facilities, equipment and assets, including customer accounts, employees, and brand names. For example, if an incumbent has secured a significant contract to provide advanced services, the incumbent should be precluded from transferring the contract to its affiliate. Permitting a wholesale transfer of a large customer base would clearly provide the affiliate a leg up on its competitors, who are expending significant sums of capital to market their services. In addition, because what is to be considered

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[28] The Commission correctly reached this conclusion in the *Non-Accounting Safeguards Order*, when it ruled that an incumbent's transfer to its affiliate of any network elements that must be provided on an unbundled basis would make the affiliate an assign. *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the*

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a *de minimis* transfer is generally a fact-based determination,[29] and therefore difficult to enforce, the Commission should ensure that its transaction disclosure requirements are effectively crafted and vigorously enforced.

II. BECAUSE ILECS RETAIN MARKET POWER CONTROL OVER COLLOCATION AND THE LOCAL LOOP, THE COMMISSION SHOULD ADOPT ADDITIONAL NATIONAL COLLOCATION AND LOCAL LOOP REQUIREMENTS.

A. Pursuant to its authority under the 1996 Act, the Commission should implement national collocation requirements to eliminate barriers to entry and facilitate the deployment of advanced services.

As Transwire has previously demonstrated, competitive entry into the data services market is impeded by the lack of collocation space, restrictions on the type of equipment that can be placed in collocation spaces, delays in providing space, and excessive rates and onerous terms and conditions for collocation.[30] The bulk of comments demonstrate that potential new entrants to the advanced services market, including competitive LECs,[31] interexchange carriers (IXCs")[32]

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Communications Act of 1934, as amended, 11 FCC Rcd 22054, ¶ 309 ("*Non-Accounting Safeguards Order*"). *See also* 47 C.F.R. § 53.207.

[29] *See, e.g., Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249, 262 n.9 (1974).

[30] Comments of Transwire Communications, Inc., Docket No. 98-147 at 24-32 (filed September 25, 1998).

[31] *See ,e.g.,* Comments of Cable & Wireless, Docket No. 98-147 at 9-13 (filed September 25, 1998A)("C&W's Comments"); Comments of Covad Communications, Docket No. 98-147 at 1-19 (filed September 25, 1998) (Covad's Comments").

[32] *See, e.g.,* Comments of AT&T, Docket No. 98-147 at 71-72 (filed September 25, 1998) ("AT&T's Comments"); Comments of Sprint Communications, Docket No. 98-147 at 10-11 (filed September 25, 1998) ("Sprint's Comments").

and internet service providers ("ISPs"),[33] are similarly concerned with these barriers to entry and advocate the adoption of national collocation requirements. In contrast, incumbent LECs predictably oppose national standards, in most cases citing the Commission's lack of authority to issue collocation rules, and instead propose to require new entrants to pursue collocation arrangements through arbitration or negotiation.[34] The incumbent LECs offer little, if any, discussion addressing solutions to inadequate collocation space and excessive costs and delays.

As an initial matter, requiring new entrants to pursue collocation arrangements through arbitration or negotiation is not an adequate solution to current collocation restrictions and will only further delay the deployment of advanced telecommunications services by competitive carriers. Without national collocation standards, competitive carriers will be placed in the tenuous position of negotiating with incumbent LECs that have the ability and the incentive to restrict access to their central office and remote terminal space to divert competition. There is broad consensus among the commenters, particularly new entrants dependant on incumbent LEC facilities, that ILEC collocation practices are inconsistent, unreasonable and expensive.[35]

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[33] *See, e.g.,* Comments of the Internet Access Coalition, Docket No. 98-147 at 17-19 (filed September 25, 1998); Comments of the Commercial Internet Exchange Association, Docket No. 98-147 at 24-25 (filed September 25, 1998).

[34] *See, e.g.,* Ameritech's Comments at 32-33; Bell Atlantic's Comments at 31-34; Bell South's Comments at 46-47; SBC's Comments at 20.

[35] *See, e.g.,* Covad's Comments, Attachment 1 at 5 ("ILECs generally require CLECs to collocate equipment in a segregated collocation room or area, even though construction . . . are [sic] very costly, time-consuming, and prevent CLECs from collocating in a number of central offices because of ostensible space considerations."); Sprint's Comments at 10 ("Collocation today can be an unnecessarily slow and exorbitantly expensive process."); C & W's Comments at 11 ("CWI has found that ILECs have been engaging in anticompetitive behavior by imposing substantial costs and delays on competitors for space and construction of collocation cages."); Comments of Qwest, Docket No. 98-147 at 57 (filed September 25, 1998) ("Qwest's Comments") ("non-recurring and monthly

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Moreover, those competitive carriers that have had the experience of "negotiating" with incumbent LECs for collocation arrangements express particular frustration with their inability to obtain collocation space on a fair and cost-efficient basis, and within a reasonable period of time.[36]

As the wide array of comments make clear, national standards are necessary to implement the pro-competitive provisions of the 1996 Act and remove barriers to entry, to "provide greater certainty for planning deployment of advanced services by both ILECs and competitors."[37]

Furthermore, while Transwire believes that state commissions should have the flexibility to establish additional collocation requirements in the context of State arbitration proceedings and rulemakings, Sections 201 and 251 of the 1996 Act clearly grant the Commission the authority to establish national collocation standards to promote local competition and speed the deployment of advanced services. Nevertheless, incumbent LECs' claim that the States -- not the Commission --are properly authorized to address collocation concerns.[38] In making these

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collocation charges alone could make the provision of xDSL services by competing carriers cost prohibitive, due to the fact that the ILEC does not have to pay similar charges").

[36] *See* Comments of e.spire, Docket No. 98-147 at 21 (filed September 25, 1998) ("e.spire's Comments") (noting that although "solutions to these problems are readily available, . . .generally ILECs are not willing to implement them voluntarily").

[37] Qwest's Comments at 52.

[38] *See e.g.,* Ameritech's Comments at 39-40 (contending that the FCC has no authority under the Act to require collocation of CLEC switching equipment); Bell Atlantic's Comments at 32 ("states have been given the responsibility to determine whether sufficient space is available for collocation, and the states alone should develop any new rules"); BellSouth's Comments at 47 ("the Commission should allow the state commissions to determine

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arguments, incumbent LECs ignore the 1996 Act's directive to the Commission to implement Congress' objective: "to promote innovation and investment by all participants in the telecommunications marketplace" [39] through "measures that promote competition . . . or other regulating methods."[40] In this regard, the Act contemplated, and in fact incorporated, the States' key role in problem solving and implementing pro-competitive policies, by jointly authorizing "[t]he Commission and each State commission" to utilize such regulatory measures to encourage the speedy deployment of advanced telecommunications capability and services.[41] Accordingly, the Commission is acting within its statutorily granted authority by proposing to implement collocation rules to foster deployment of advanced services and by encouraging states to adopt additional requirements that relate to their region.

Along with the broad consensus of commenters, Transwire urges the Commission to implement national collocation rules to reduce the costs and delays currently associated with obtaining collocation space, to provide competitive carriers with predictability and efficiency in their provision of services, and to enhance the timely deployment of advanced telecommunications services, consistent with the goals of the 1996 Act. However, the Commission should not only adopt specific and detailed national collocation rules, it must ensure that incumbent LECs are prevented from evading its collocation rules "by playing state and

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what is necessary to help them resolve any collocation disputes"); SBC's Comments at 20 ("these [collocation] issues are being more than adequately addressed by negotiations and State commissions").

[39] *NPRM* at ¶ 1.

[40] 47 U.S.C. § 706(a) (1996).

federal rules off against one other."[42] To deter such anticompetitive and unlawful behavior, Transwire supports the Commission's conclusion that any standards it adopts will serve as minimum requirements, and the states will be free to adopt additional requirements that respond to state-specific issues.[43]

B. The Commission should prescribe alternative methods of collocation, eliminate restrictions on collocation equipment, and require ILECs to provision collocation space in a timely manner.

The broad consensus among commenters is that detailed rules requiring incumbent LECs to provide nondiscriminatory collocation, collocation of cost-efficient integrated equipment, and the timely ordering and provisioning of collocation space is critical to enabling competitive LECs to achieve their full potential in deploying advanced communications capability.

First, commenters generally agree that it is important to ensure that competitive LECs are provided with a number of collocation options and not restricted to any particular collocation arrangement. Sprint, for example, suggests cageless collocation and a "variant" of cageless collocation where requesting carriers install and maintain their own equipment "commingled with ILEC and/or CLEC equipment."[44] AT&T also suggests cageless collocation as its preferred collocation alternative, citing cageless collocation as "the only option that will substantially

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41 *Id.*

42 AT&T's Comments at 73.

43 *NPRM* at ¶ 124.

44 Sprint's Comments at 14.

increase the total available space for collocation."[45] AT&T also recommends shared cage collocation, which it believes will increase the efficient use of space and reduce costs and delays.[46] In general, the comments confirm that in order to minimize the space needed by each competing provider and promote the deployment of advanced services, the Commission should provide various options for collocation, including physical, cageless, cage sharing and cross connection to cages of other collocated carriers.[47] Adopting additional forms of collocation will permit requesting carriers to obtain collocation arrangements that are specifically adapted to their deployment needs and cost constraints, increase efficiency, and facilitate the deployment of advanced services.

Second, the record demonstrates that the Commission's rules should be revised in a technically neutral manner to remove restrictions on collocating equipment with switching functionality. In this regard, and as several commenters have demonstrated, current restrictions on collocating equipment limits the development and use of more efficient integrated telecommunications equipment – equipment that typically performs multiple functions and

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45 AT&T's Comments at 85.

46 *Id.* at 83-84.

47 *See, e.g.,* Covad's Comments at Attachment 1 ("Cageless physical collocation is technically feasible in all aspects, including operational, technical, security and administrative" and "offers CLECs true parity of opportunity to place equipment in a CO."); Qwest's Comments at 56 ("All of the alternatives suggested by the Commission are technically feasible . . .[r]eduction of costs for space and security requirements is critical to the deployment of advanced services"); C & W's Comments at 12 (noting that while "cageless collocation offers by far the most efficient and attractive use of collocation space" that all of "the Commission's [collocation] suggestions promote a more efficient use of collocation space").

broadens the scope of potential service offerings.[48] There is general consensus among commenters that a restriction on the type of equipment competing carriers may collocate will certainly arrest the growth of efficient network design and undoubtedly encourage incumbent LECs to delay the entry of competitive carriers to the advanced services market.[49]

Third, the comments confirm that competitive carriers advocate rules to facilitate the timely ordering and provisioning of collocation space by requiring reporting requirements,[50] implementing solutions to maximize space,[51] and adopting non-intrusive security measures. In this latter regard, there is general agreement among commenters that incumbent LECs may use

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[48] *See, e.g.*, Sprint's Comments at 100 ("advances in technology increasingly blur the line between data routing functionalities, termination functionalities, and traffic transport and multiplexing functionalities. New generation equipment that performs multiple functions . . . should be allowed in collocation spaces"); e.spire's Comments at 27 ("ILECs are using restrictions on the types of equipment that can be collocated as a way to prevent CLECs from employing efficient network architectures"); MCI WorldCom's Comments at 53 ("telecommunications equipment now integrated multiple functions. This would afford CLECs the ability to efficiently provide many advanced services and would reduce the amount of space needed by CLECs").

[49] *See, e.g.*, Qwest's Comment at 52 (noting that the prohibition on the collocation of switching equipment is "a significant impediment to the cost effective deployment of advanced services by competitors" and the ILEC "derives a tremendous competitive advantage from its ability to efficiently connect its switching equipment with the network infrastructure"); C & W's Comments at 10 ("ILECs have been refusing to permit competitors to collocate certain technologically advanced equipment . . .to combat this blatantly anticompetitive ILEC behavior, the FCC must require ILECs to allow competitors to collocate *all* types of equipment, regardless of functionality").

[50] *See, e.g.*, e.spire's Comments at 29 (recommending "[r]equiring ILECs and CLECs to report on space utilization rates [to] ensure that scarce collocation space is used efficiently"); Sprint's Comments at 15 (proposing that "an ILEC should be required to provide quotes as to the date of availability and price of collocation within ten business days after receipt of such request"); AT&T's Comments at 89 ("the ILEC should be required to inventory its space in each central office to track what space is being used for administrative rather than network purposes").

[51] *See, e.g.*, Sprint's Comments at 15 ("if an ILEC has insufficient space available in central offices to meet the demand for collocation, it should be required to take reasonable steps to free up additional space"); AT&T's Comments at 88 ("The Commission should also hold that ILECs are not permitted to reserve space for their own use more than one year prior to the date they expect to use it").

issues of security and access to incumbent LECs' networks as a means to prevent, delay, or otherwise impede competition[52]

As predicted by competitive carriers, and in stark contrast to the greater number of comments, incumbent LECs respond to the Commission's collocation concerns by either relying on inflexible and unsupported concerns regarding security,[53] denying that collocation delays even exist,[54] or reiterating their claim that the Commission lacks authority to implement collocation rules.[55] The Commission must distinguish these efforts by incumbent LECs to utilize monopoly access network practices to deter competitors and hinder the deployment of advanced services with those reasonable requests made by competing carriers for nondiscriminatory and fair collocation rules. In most, if not all cases, competing carriers are merely requesting prompt access to collocation space at reasonable costs, and, while recognizing security concerns, proposing reasonable and efficient safeguards to ensure the integrity of the network.

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[52] *See, e.g.*, MCI WorldCom's Comments at 59 ("ILECs should not be permitted to unilaterally impose unjustified and costly security measures to deter CLECs seeking access to their equipment"); C & W's Comments at 12-13 (finding that ILECs consistently deny competitors access to their collocated equipment on the basis of security concerns); e.spire's Comments at 30 ("The Commission should reject any effort of ILECs to impose artificially high security costs onto CLECs for collocation . . . requiring escorts is needlessly expensive and time consuming").

[53] *See, e.g.*, Ameritech's Comments at 42 ("a cage exists primarily for the security benefit of the collocating carrier"); Bell Atlantic's Comments at 33 ("Since the advent of physical collocation . . . the Commission has allowed local exchange carriers to take reasonable security measures for [sic] to protect the public switched network against service interruption"); SBC's Comments at 22 ("cageless collocation raises an unacceptably high risk of harm to an ILEC's network and services, as well as raises proprietary concerns").

[54] *See, e.g.*, Ameritech's Comments at 45.

[55] *See* n.42 supra.

For the foregoing reasons, Transwire urges the Commission to adopt its proposed collocation rules and to implement a swift and effective framework for complaint resolution concerning collocation arrangements and the ordering and provisioning of collocation space.

C. The comments confirm that ILECs should be required to provide requesting carriers with access to the local loop and nondiscriminatory and detailed OSS information regarding loops.

As Transwire previously demonstrated, the issue of access to the local loop is critical if the rapid deployment of advanced telecommunications capability and services is to be achieved. The Commission must therefore ensure that the existing copper wire infrastructure, a vital resource for the provision of advanced services through the use of Consumer Digital Modem ("CDM") and other copper-based technologies, is preserved and protected. In this regard, incumbent LECs should not be permitted to take any actions that result in rendering the copper useless.

Moreover, the Commission should ensure that to the extent that incumbent LECs disenfranchise copper facilities, for example, through the deployment of fiber throughout their network, requesting carriers should have the right, if technically feasible, to obtain access in a timely manner to the disenfranchised copper. Competitors seeking access to the disenfranchised copper should not be required to engage in lengthy negotiations to obtain such access.

In short, the need to establish national standards with respect to the regulation of local loops goes beyond facilitating entry into the advanced services market or encouraging its rapid deployment. Rather, adopting national standards to require incumbent LECs to preserve the copper infrastructure as a resource and to simplify access to disenfranchised copper facilities is

critical to the very feasibility of deploying advanced telecommunications capability to all Americans.[56]

Although characterized in different ways, the wide array of commenters agree with Transwire's general proposition that the Commission should guarantee the preservation and protection of the existing copper wire infrastructure and ensure unbundled access to the incumbent LECs' copper loop to encourage full realization of emerging copper-based technologies. Commenters advocate, *inter alia*, a specific and strictly enforced loop definition,[57] complete OSS information,[58] the provision of subloop unbundling,[59] and some standard of spectrum management.[60] In light of the fact that each competitive LEC has its own business strategy and unique reasons for obtaining loop access in a particular manner or at a particular location, a competitive LEC must be able to request any "technically feasible" method of unbundling a DLC-loop. Any impediments to the competitive LECs' ability to unbundle sub-loops or collocate at remote terminals would have a detrimental effect on the deployment of advanced telecommunications capability.

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[56] *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382.

[57] *See, e.g.*, AT&T's Comments at 41 ("the Commission should supplement its current loop definition with three types of loops that ILECs must unbundle upon request: a basic loop, an xDSL capable or, and an xDSL equipped loop.").

[58] See, *e.g.*, MCI WorldCom's Comments at 63 ("the need for a standardized pre-ordering OSS that enables CLECs to identify critical characteristics of the loop is now more important than ever").

[59] *See, e.g.*, C & W's Comments at 15-16 ("CWI believes that sub-loop unbundling and remote terminal access are essential elements in the provision by competitive providers of highbandwidth services").

With regard to the responses of incumbent LECs on the issue of access to loops, loop unbundling, and loop spectrum management, there is again, concerted resistance to the adoption of new rules to address the rapidly changing telecommunications environment. In brief, the sum of incumbent LECs advocate maintaining the status quo, assuring the Commission that existing unbundling rules are adequate, denying the Commission's authority to require incumbent LECs to offer "conditioned" loops, and resisting changes to loop spectrum management.[61] However, as is plainly demonstrated by the comments, the deployment of advanced telecommunications capability and services requires access to the local loop at any technically feasible point and nondiscriminatory access to OSS systems for loop ordering and provisioning. Without such access and information, Transwire and other companies seeking to deploy CDM, xDSL and other technologies will be locked out of the marketplace.

For these reasons, Transwire again urges the Commission to extend the competitive safeguards applicable to physical collocation to access to unbundled elements and OSS systems, and to the incumbent LECs' provisioning of sub-loop unbundling and collocation at remote terminals.

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[60] .spire's Comments at 36-37 ("the Commission should establish appropriate loop spectrum management rules"); MCI WorldCom's Comments at 66 ("deployment must be based on industry-defined standards and accepted deployment guidelines").

[61] *See, e.g.*, Bell Atlantic's Comments at 45-52; BellSouth's Comments at 48-53; US West at 43-49.

III. RESALE OBLIGATIONS UNDER SECTION 251(c)(4)

Transwire reiterates its agreement with the Commission's *Advanced Services Order* and urges the Commission to follow through on its conclusion that the dichotomy drawn between telecommunications services and exchange access services in the *Local Competition Order*[62] is inappropriate in the advanced services context.[63] The opponents of this conclusion offer primarily the *Order*'s inconsistency with the *Local Competition Order* as grounds to rebut this determination.[64] In addition, Bell Atlantic suggests that the fact that "some large end users might purchase . . . exchange access services directly from an access tariff" in no way alters the "fundamentally non-retail character" of such services.[65] However, Bell Atlantic's argument points out the primary flaw of their position: exchange access services are in fact offered to end users other than telecommunications carriers,[66] and thus, to that extent at least, should be subject to the resale obligations of section 251(c)(4).[67]

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62 *Local Competition Order*, 11 FCC Rcd at 15934, ¶ 873.

63 *NPRM* at ¶ 30.

64 *See, e.g.*, U S WEST's Comments at 13-15; Comments of the United States Telephone Association, CC Docket 98-147, at 7-11 (filed September 25, 1998).

65 Bell Atlantic's Comments at 54.

66 *See, e.g., Local Competition Order*, 11 FCC Rcd at 15934-35, ¶ 873 (describing end user purchase of "special access, Feature Group A, and certain Feature Group D elements for large private networks") (footnote omitted).

67 47 U.S.C. § 251(c)(4) (1996).

While the BOCs are correct, and the Commission has conceded, that, as a general matter, exchange access services are "predominantly offered to, and taken by, interexchange carriers ("IXCs"), not end users,"[68] nothing in their access tariffs limits such offerings to other telecommunications carriers.[69] The BOCs' reliance on the *Local Competition Order* as precluding the Commission's clarification in the advanced services context is simply misplaced and cannot even be squared with their own practices as evidenced by their access tariffs.

Transwire does not dispute the BOCs' contention that exchange access services fall outside the "core category of retail services" contemplated by section 251(c)(4).[70] However, as technology evolves, the lines are continually blurring and making formerly significant distinctions virtually meaningless. Continued rigid adherence to such distinctions will stifle development, retard deployment, and impede competition in the advanced services market in particular. Therefore, Transwire continues to advocate the Commission's conclusion that advanced services marketed by incumbent LECs to residential or business users or to Internet service providers should be subject to the resale obligations contained in section 251(c)(4) without regard to their classification as telephone exchange service or exchange access.[71]

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68 *Local Competition Order*, 11 FCC Rcd at 15935, ¶ 874.

69 *Id.* ¶ 873.

70 *NPRM* at ¶ 189.

71 *Id.*

IV. LIMITED INTERLATA RELIEF

Transwire is not surprised to discover that the BOCs have, once again, raised a series of arguments to collectively whittle away every edge of the sections 271 and 272 interLATA services restriction.[72] In response, Transwire again urges the Commission not to grant interLATA relief to allow BOCs to carry packet-switched traffic across current LATA boundaries for the purpose of providing end users with high-speed connections to nearby Internet network access points ("NAPs"). Such relief should not be considered a LATA "modification" as allowed by section 3(25) of the 1996 Act.[73] In order words, as a matter of both law and policy, the LATA modification process contemplated by section 3(25) must not be permitted to undercut the explicit statutory scheme allowing BOC entry into the interLATA market, including advanced telecommunications services.[74] Transwire urges the Commission to continue to enforce and interpret the plain meaning of these statutory provisions, which provide BOCs with incentives to open their in-region local networks.

The Act could hardly be more explicit about the manner in which the BOCs may seek authority to enter the in-region interLATA services market.[75] In particular, section 271 sets out a detailed and specific procedure by which the Commission must evaluate a request for authority

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72 47 U.S.C. §§ 271-272 (1996).

73 47 U.S.C. § 153(25) (1996).

74 *MCI v. AT&T*, 512 U.S. 218, 225 (1994) (use of the word "modify" in the Communications Act of 1934, as amended by 47 U.S.C. § 151 *et seq.*, means "to change moderately or in minor fashion"). *See also United States v. Western Electric Co.*, 673 F. Supp. 525, 545 (D.D.C. 1987) (concluding that "piecemeal waivers" requested by the BOCs "nibble incessantly at the edges of the restrictions").

to enter either the interLATA telecommunications or information service markets and further obligates the Commission to monitor a BOC's continuing compliance with those competitive checklist requirements.[76] Thus, Congress has made its position quite clear: compliance with the competitive mandates of the 1996 Act and section 271 are necessary prerequisites for the regional BOCs to enter the interLATA advanced telecommunications services market.[77] Congress further expressed this mandate by specifically foreclosing any Commission action that veers from the express terms of section 271: "LIMITATION ON COMMISSION—The Commission may not, by rule *or otherwise*, limit or extend the terms used in the competitive checklist . . . ."[78]

SBC, for example, suggests that the proposed advanced services data affiliate should not be subject to the interLATA service restriction of section 271 or the requirements of section 272.[79] This flatly contradicts the section 271(a) restriction, which applies to an RBOC "*and any affiliate* of a Bell operating company."[80] Further, this proposition contravenes the decision in the

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75 47 U.S.C. § 271(c) (1996).

76 47 U.S.C. § 271(d) (1996).

77 47 U.S.C. § 271(c) (1996). While the Act allows the BOCs to provide "incidental interLATA services," as that term is defined in § 271(g), 47 U.S.C. §271(g) (1996), it also states that subsection (g) must be narrowly construed. 47 U.S.C. § 271(h) (1996).

78 47 U.S.C. § 271(d)(4) (1996) (emphasis added).

79 SBC's Comments at 10.

80 47 U.S.C. § 271(a) (1996) (emphasis added).

Advanced Services Order that the interLATA services restriction applies until the RBOC successfully meets the approval process of section 271(c).[81] In sum, an "advanced services" option created by the Commission should not be a means of avoiding the statutory process of BOC entry into the interLATA services market,[82] including the section 272 separate subsidiary requirements.

Transwire also objects to Ameritech's proposal for a state-by-state LATA modification process on the establishment of a data separate affiliate and a showing of compliance with certain unbundling and collocation laws.[83] Essentially, Ameritech proposes to turn the LATA modification process into a process of compromise of the "competitive checklist" of section 271(c)(2). The Commission has already substantially rejected this approach to LATA modifications.[84] In any event, the Act specifically admonishes the Commission not to compromise the section 271 approval process in any way: "[t]he Commission may not, *by rule or otherwise*, limit . . . the terms used in the competitive checklist set forth in subsection (c)(2)B)."[85] Moreover, Ameritech makes no case for such a radical departure from these

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81 *Advanced Services Order* at ¶¶ 77-78.

82 If the scope of the modifications requested by the BOCs is expanded along the lines suggested in the *NPRM* and their collective comments in response, "the slice of interexchange competition foreclosed, even if narrow today, could prove difficult to confine." *See United States v. Western Electric Co.*, 969 F.2d 1231, 1242 (D.C. Cir. 1992). *See also id.*, 900 F.2d 283, 309 n.29 (noting concern over "the practical difficulty of enforcing a merely *partial* repeal" of a restriction) (emphasis in original).

83 *Ameritech's Comments* at 70-76.

84 *Advanced Services Order* at ¶ 82.

85 47 U.S.C. § 271(d)(4) (emphasis added).

statutory obligations. While Ameritech claims to see a "LATA penalty," it alone may avoid that penalty by meeting the terms of sections 271/272 on a state-by-state basis.

Bell Atlantic in turn posits the novel argument that "section 271 covers only telecommunications, not information services"[86] and so a BOC may provide interLATA information services so long as "it uses leased [interLATA] transmission facilities that are bundled into its information service for a single price."[87] In Transwire's view, this is a completely implausible reading of the section 271 restriction. As an initial matter, Bell Atlantic's definitional interpretations are largely refuted by the *Non-Accounting Safeguards Order,*[88] where the Commission found that the statutory restriction on "interLATA services" includes a restriction on BOC information services: "a BOC may not provide in-region interLATA information services until it obtains section 271 approval."[89] It follows that the restriction on interLATA information services, as interpreted by the Commission, has separate legal significance and meaning from the restriction on interLATA telecommunications.[90]

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86 Bell Atlantic's Comments at 17.

87 *Id.* at 13.

88 *Non-Accounting Safeguards Order*, ¶¶ 55-57.

89 *Id.* at ¶ 57. It should be noted that Bell Atlantic's argument is largely a challenge to the Commission's decisions in the *Non-Accounting Safeguards Order* that impose interLATA information service restrictions on Bell operating companies. As such, it is an untimely petition for reconsideration, and should be appropriately dismissed. 47 U.S.C. § 405(a) (1996). At best, it is a plea for declaratory ruling or rulemaking, and is beyond the scope of this proceeding.

90 It is also persuasive that the MFJ restriction on interLATA services similarly precluded Bell companies from offering interLATA information services. *United States v. Western Electric Co.*, 969 F.2d 1231, 1242 (D.C. Cir. 1992).

Moreover, the Commission has already addressed the substance of Bell Atlantic's contentions. In the *Non-Accounting Safeguards Order*, the Commission found that the bundling of a third-party interLATA transmission component with a BOC intraLATA information service constitutes an interLATA information service for which section 271 approval is required.[91] Further, the interLATA component of the service is not "provided" or "offered" by the BOC only if the customer may access it by a "means independently chosen by the customer . . . . ."[92] The BOC avoids interLATA restriction *only* when it offers customers of its information service an "equal access" arrangement so that the BOC "is neither providing nor reselling the interLATA transmission component of an information service . . . ."[93] Bell Atlantic's argument that a BOC may bundle the interLATA transmission and Internet component (commonly termed a "global service provider" or "GSP" service) with its own in-region Internet access service would clearly run afoul of sections 271 and 272. In addition, Bell Atlantic's position on "interLATA information service" bundling also contradicts its own statements to the Commission, as well as the Commission's order approving Bell Atlantic's CEI plan for Internet access.[94]

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91 *Non-Accounting Safeguards Order* at ¶ 120 n. 276.

92 *Id.* at ¶ 117.

93 *Id. See also AT&T Corp., et al., v. Ameritech Corp, et al.*, Memorandum Opinion and Order, File Nos 98-41, 98-42, 98-43, FCC 98-242, at ¶50 (rel. Oct. 7, 1998) (Ameritech and US West arrangement with Qwest exceeds "mere marketing" and involves "provision" of interLATA service in violation of section 271(a) restriction).

94 *Bell Atlantic Telephone Companies' Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, Order, 11 FCC Rcd. 6919, ¶ 49 (1996) ("Bell Atlantic states that it will not carry long-distance traffic that originates within its region across LATA boundaries until it receives authorization to provide such services. . . . . end user customers will have to select, and establish separate

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Transwire reiterates that the LATA modifications permitted to date are qualitatively different than the proposals presently before the Commission, particularly that for BOC interLATA service to NAPs.[95] In both the *LATA Association*[96] and the *Expanded Local Calling Area*[97] cases, the Commission's LATA modifications were aimed at improving local exchange service or meeting changes in state determinations of appropriate local calling areas and were consistent with the federal court decisions on LATA boundary waivers. Those modifications were not to compensate for some perceived limitations of the interLATA service industry. The interLATA-NAP proposal, however, is qualitatively different because it would afford the BOCs a method of entering the traditional market sphere of interLATA providers and of circumventing the stringent requirements of section 271.

Transwire also concludes that the InterLATA NAP proposal is highly unlikely to accomplish the goal of securing high-speed Internet-based services for end-users. The provision of Internet backbone services is a competitive business today. The entry of the BOCs into this market, with their monopoly control to the end-user, poses an enormous threat to competition. If, consistent with Congress' express desire, the Commission is committed to let market

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arrangements with, interexchange carriers to carry traffic to and from servers on the Internet that are located across LATA boundaries. Bell Atlantic argues that the proposed service is simply an access service for connection to the Internet."); *id.* at ¶51 ("Pursuant to Sections 271 and 272 of the Communications Act, BOCs must provide interLATA information services through separate affiliates.").

95 *See* AT&T's Comments at 103-05.

96 See *Guadeloupe Valley Telephone Cooperative Request for LATA Relief*, Memorandum Opinion and Order, 13 FCC Rcd 4560, 4563-64 (CCB 1998).

competition reign in the advanced telecommunications services market, then it must resist the temptation to intervene based on BOC claims that somehow the competitive market has gone askew.[98]

In addition, requests to provide raw bandwidth using BOC interLATA lines reflect a misunderstanding of the common causes of less-than-expected application performance on the Internet. Since effective data transmission over the Internet depends on low packet loss rather than line capability, such issues will not be resolved through additional lines for raw bandwidth; rather, the causes of Internet congestion are more related to protocol dynamics. Internet performance problems are best addressed through Internet-specific engineering strategies that are not always emphasized or well-understood in the telephone community. For these reasons, BOC-provided solutions are unlikely to actually serve the underlying goal of "facilitating high-speed access."[99] As is most often the case in young markets, the best solution is more likely found among those who make the provision of advanced telecommunications capability their primary focus, not a secondary or tertiary one.

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[97] *See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service*; Memorandum Opinion and Order, File No. NSD-LM-97-2, ¶¶14-17 (released July 15, 1998).

[98] Bell Atlantic-West Virginia's recent request for LATA modification also raises the possibility that the Commission's LATA modification process can be subject to manipulation. The record of that proceeding shows that Bell Atlantic was not interested in contacting other providers of interLATA lines that were, in fact, ready and able to provide the services. Rather, it underscores the BOC's desire to vertically integrate interLATA services with local access, by inventing a "backbone crisis." *Emergency Petition of Bell Atlantic—West Virginia for Authorization to End West Virginia's Bandwidth Crisis*, Emergency Request for Interim Relief, CC Docket No. 98-11 (filed July 22, 1998).

[99] *NPRM* at ¶194.

Accordingly, the Commission should heed the command of Congress and stand fast against *ad hoc* modifications to LATA boundaries. Let the invisible hand of market economics work its magic[100] and shape the advanced telecommunications services market. As demand requires, competition will drive entry into the interLATA services market, and Congress' dual dream of the deployment of advanced telecommunications capability to all Americans in a robust competitive market unencumbered by regulation will be realized.

In conclusion, Transwire implores the Commission to reject the BOCs' latest efforts to eviscerate the clear and explicit statutory scheme for entry into the interLATA services market.

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[100] The Commission would be wise to abide Adam Smith's teaching that individual market decisions operate in the collective interest of market players as if guided by an "invisible hand." A. SMITH, THE WEALTH OF NATIONS *passim* (1776).

V. CONCLUSION

The deployment of advanced telecommunications capability to all Americans, as is the Commission's charge, is contingent on the ability of competitive and innovative providers of advanced telecommunications services to enter the market unburdened by unnecessary regulation and assured of ready access to those elements of the existing telecommunications infrastructure integral to the provision of advanced services. Accordingly, the Commission must in this rulemaking undertake only those actions that encourage robust competition and technological advancement. The Commission must tame the advantages of the monopolies that have defined the telecommunications industry throughout the majority of this century and nurture the next generation of competing providers to ensure that all Americans realize to the fullest extent possible the wonders of the telecommunications revolution already underway.

Respectively submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Comments of Transwire Communications, Inc. was sent via first-class mail or hand-delivery* to the individuals on the attached service list, this 16th day of October, 1998.

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